

## UNITED STATES DISTRICT COURT

for the  
Southern District of New York

17 MAG. 6471

In the Matter of the Search of  
(Briefly describe the property to be searched  
or identify the person by name and address)

Case No.

A Seagate hard drive with serial number P/N:  
1K9AP1-501 and an Apricorn Aegis Padlock hard drive  
with serial number A-25-3PL256-500

## SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search  
of the following person or property located in the Southern District of New York  
(identify the person or describe the property to be searched and give its location):

See Attachment A

The person or property to be searched, described above, is believed to conceal (identify the person or describe the property  
to be seized):

See Attachment A

The search and seizure are related to violation(s) of (insert statutory citations):

Title 15, United States Code, Sections 7202(b)(1) & 78ff and Ethics Code 9 of the Rules of the Public Company Accounting Oversight Board (the "PCAOB"); Title 18, United States Code, Section 1343;  
Title 18, United States Code, Sections 1346 and 1343; Title 18, United States Code, Section 1503; Title 18, United States Code, Section 1519; Title 18, United States Code, Section 371; and Title 18,  
United States Code, Section 2 (together, the "Subject Offenses")I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or  
property.**YOU ARE COMMANDED** to execute this warrant on or before \_\_\_\_\_

(not to exceed 14 days)

☒ in the daytime 6:00 a.m. to 10 p.m.☐ at any time in the day or night as I find reasonable cause has been  
established.Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property  
taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the  
place where the property was taken.The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an  
inventory as required by law and promptly return this warrant and inventory to the Clerk of the Court.☒ Upon its return, this warrant and inventory should be filed under seal by the Clerk of the Court.

USMJ Initials

☒ I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay  
of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be  
searched or seized (check the appropriate box) ☒ for 30 days (not to exceed 30).☐ until, the facts justifying, the later specific date of \_\_\_\_\_.

Henry Pitman

Date and time issued:

6/25/17 10:45am

Judge's signature

City and state: New York, NY

Hon. Henry B. Pitman

Printed name and title

AO 93 (SDNY Rev. 01/17) Search and Seizure Warrant (Page 2)

<b>Return</b>		
Case No.:	Date and time warrant executed:	Copy of warrant and inventory left with:
Inventory made in the presence of :		
Inventory of the property taken and name of any person(s) seized:		
<b>Certification</b>		
<p>I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the Court.</p>		
Date: _____	_____ <i>Executing officer's signature</i>	
	_____ <i>Printed name and title</i>	

## Attachment A

### I. Drives Subject to Search and Seizure

The devices that are the subject of this search and seizure warrant (the “Subject Drives”) contain forensic images of cellular telephones, SIM cards, and iPads (the “Electronic Devices”) and are described as follows:

- **Hard Drive 1 is particularly described as a Seagate hard drive with serial number P/N: 1K9AP1-501.**
- **Hard Drive 2 is particularly described as an Apricorn Aegis Padlock hard drive with serial number A-25-3PL256-500.**

### II. Review of ESI on the Subject Drives

Law enforcement personnel (including, in addition to law enforcement officers and agents, and depending on the nature of the ESI and the status of the investigation and related proceedings, attorneys for the government, attorney support staff, agency personnel assisting the government in this investigation, and outside technical experts under government control) are authorized to review the ESI contained on the Subject Drives for evidence, fruits, and instrumentalities of violations of Title 15, United States Code, Sections 7202(b)(1) & 78ff and Ethics Code 9 of the Rules of the Public Company Accounting Oversight Board (the “PCAOB”) (willful violations of PCAOB Rules constituting criminal violations of the Securities Exchange Act of 1934); Title 18, United States Code, Section 1343 (wire fraud); Title 18, United States Code, Sections 1346 and 1343 (honest services wire fraud); Title 18, United States Code, Section 1503 (obstruction of justice); Title 18, United States Code, Section 1519 (destruction, alteration or falsification of records to obstruct a government investigation); conspiracy to commit such offenses in violation of Title 18, United States Code, Section 371; and aiding and abetting such offenses in violation of Title 18, United States Code, Section 2 (together, the “Subject Offenses”) described as follows:

- Evidence of any efforts to obtain, embezzle, misappropriate, transfer, share or exploit confidential information obtained by virtue of employment at PCAOB (“confidential PCOAB information”), and evidence of any agreement to do the same.
- Evidence concerning the identity or location of, and communications with, any co-conspirators, including: (i) records of all call activity, including incoming and outgoing calls and other communications and lists of stored telephone numbers and other identifying information, such as names; (ii) address books and contact lists; and (iii) calendar or other scheduling information;
- Voicemail and all SMS (simple message service) messages, data messages, text messages, stored e-mail, MMS (Multimedia Messaging Service), and any other messages or other information stored on the Electronic Devices pertaining to the Subject Offenses;
- All files or media containing text, photos, sound recordings, or videos stored on the Elect pertaining to the Subject Offenses including, but not limited to, media related to the

Subject Offenses;

- Any other user or system files and data on the Electronic Devices that would constitute evidence of violations of the Subject Offenses; and

## UNITED STATES DISTRICT COURT

for the  
Southern District of New York

In the Matter of the Search of

*(Briefly describe the property to be searched  
or identify the person by name and address)*A Seagate hard drive with serial number P/N: 1K9AP1-501 and an  
Apricorn Aegis Padlock hard drive with serial number  
A-25-3PL256-50017 MAG. 6471  
Case No.

## APPLICATION FOR A SEARCH AND SEIZURE WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

located in the Southern District of New York, there is now concealed *(identify the person or describe the property to be seized)*:

See Attached Affidavit and its Attachment A

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☐ evidence of a crime;
- ☐ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

## Code Section(s)

15 U.S.C §§ 7202(b)(1) & 78ff and Ethics  
Code 9 of the Rules of the PCAOB; 18  
U.S.C §§1343;1346; 1503 1519; 371; & 2

## Offense Description(s)

willful violations of PCAOB Rules constituting criminal violations of the Securities Exchange Act of  
1934; wire fraud; honest services wire fraud, obstruction of justice, destruction, alteration or  
falsification of records to obstruct a government investigation; conspiracy to commit same; and aiding  
and abetting the same.

The application is based on these facts:

See Attached Affidavit and its Attachment A

☒ Continued on the attached sheet.

☐ Delayed notice of 30 days (give exact ending date if more than 30 days: \_\_\_\_\_) is requested  
under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's signature

Postal Inspector Lyeson Daniel

Printed name and title

Sworn to before me and signed in my presence.

Date:

2/24/17

City and state: New York, NY

S/Henry Pitman

Judge's signature

Hon. Henry B. Pitman

Printed name and title



17 MAG . 6471

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Application of the United States Of America for a Search and Seizure Warrant for a Seagate hard drive with serial number P/N: 1K9AP1-501 and an Apricorn Aegis Padlock hard drive with serial number A-25-3PL256-500

**TO BE FILED UNDER SEAL**

**Agent Affidavit in Support of  
Application for Search and Seizure  
Warrant**

SOUTHERN DISTRICT OF NEW YORK) ss.:

Lyeson Daniel, being duly sworn, deposes and says:

**I. Introduction**

**A. Affiant**

1. I have been a Postal Inspector with the United States Postal Inspection Service for approximately 1 year, where I am assigned to a squad responsible for investigating white collar crime, including securities fraud and accounting fraud. I have received training regarding computer and cellular telephone technology and in the execution of search warrants on such devices. Prior to joining the United States Postal Inspection Service, I was employed for approximately 7 years in the civil enforcement division of the New York State Department of Taxation and Finance, where I conducted and supervised investigations into corporate financials in order to determine whether taxes had been properly paid. In addition, I have a bachelor's degree in information (computer) systems and a master's degree in accounting.

2. I make this Affidavit in support of an application pursuant to Rule 41 of the Federal Rules of Criminal Procedure for a warrant to search two hard drives ("Hard Drive 1" and "Hard Drive Two," together, the "Subject Drives") containing forensic images of the electronic devices specified below (the "Electronic Devices") for the items and information described in Attachment

A. This Affidavit is based upon my personal knowledge; my participation in witness interviews;

my review of documents and other evidence; my conversations with other law enforcement personnel; my conversations with counsel for KPMG (“KPMG Counsel”) and counsel for the Public Company Accounting Oversight Board (“PCAOB Counsel”); and my training, experience and advice received concerning the use of computers, tablets and cellular telephones, in criminal activity and the forensic analysis of electronically stored information (“ESI”). Because this Affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

**B. The Subject Drives**

3. Based on my review of emails and other documentation, communications by KPMG Counsel, and my participation in witness interviews, I know that in or about February and March of 2017, in connection with an internal investigation concerning the theft, misuse, and improper sharing of confidential information of the Public Company Accounting Oversight Board (the “PCAOB”) by and with employees and partners of KPMG, KPMG requested certain electronic devices from certain then-KPMG employees and partners, including David Britt, Cynthia Holder, Scott Marcello, David Middendorf, Brian Sweet, and Thomas Whittle.

4. Hard Drive 1 is particularly described as a Seagate hard drive with serial number P/N: 1K9AP1-501, containing forensic images of the following electronic devices:

- a. A Samsung Galaxy S5 used by David Britt (the “Britt Cellphone”).
- b. An iPhone 7 Plus used by Cynthia Holder (the “Holder Cellphone”).
- c. An iPhone 6 used by Scott Marcello (the “Marcello Cellphone”) and a separate partial copy of the SIM Card from Marcello’s Cellphone (the “Marcello SIM Card”).
- d. An iPhone 6s Plus used by David Middendorf (the “Middendorf Cellphone”).

- e. An iPhone 6 used by Thomas Whittle (the “Whittle Cellphone”).
- f. An iPhone 7 Plus used by Brian Sweet (the “Sweet Cellphone”) (and together with the devices set forth in paragraphs 3(a)-(f), the “Subject Cellphones”);
- g. An iPad Pro 128, which had an assigned cellular telephone number, used by Scott Marcello (the “Marcello iPad”) (and, together with the Subject Cellphones, the “Electronic Devices”).

5. Hard Drive 2 is particularly described as an Apricorn Aegis Padlock hard drive with serial number A-25-3PL256-500 containing a complete forensic image of the SIM Card from the Marcello Cellphone (and together with Hard Drive 1, the “Subject Drives”).

6. Pursuant to KPMG’s 2017 requests for certain electronic devices from certain then-employees and partners of KPMG:

- a. On or about February 27, 2017 the Sweet and Holder Cellphones were provided to KPMG or its counsel.
- b. On or about March 17, 2017, the Middendorf, Britt, and Marcello Cellphones and the Marcello iPad were provided to KPMG or its counsel.
- c. On or about March 31, 2017, the Whittle Cellphone was provided to KPMG or its counsel.

7. In or about May 2017, forensic copies of the Electronic Devices were copied to Hard Drive 1. On or about May 30, 2017, a copy of Hard Drive 1 was received by the United States Attorney’s Office for the Southern District of New York, where it has remained since that time. Due to a copying error, a duplicate and full copy of the SD Card from Marcello’s Cellphone was subsequently copied to Hard Drive 2. On or about June 2, 2017, a copy of Hard Drive 2 was



received by the United States Attorney's Office for the Southern District of New York, where it has remained since that time.<sup>1</sup>

8. Based on my training, experience, and research, I know that:

a. Cellular telephones are handheld wireless devices used for voice and data communication through radio signals. These telephones send signals through networks of transmitter/receivers, enabling communication with other wireless telephones or traditional "land line" telephones. A wireless telephone usually contains a "call log," which records the telephone number, date, and time of calls made to and from the phone. In addition to enabling voice communications, wireless telephones offer a broad range of capabilities. These capabilities include: storing names and phone numbers in electronic "address books;" storing and playing back audio files; and storing dates, appointments, and other information on personal calendars and/or in an "electronic notepad." Wireless telephones may also include global positioning system ("GPS") technology for determining the location of the device.

b. GPS navigation devices, including many cellular telephones, use the Global Positioning System to display their current location. They often contain records of the locations where they have been. Some GPS navigation devices can give a user driving or walking directions to another location. These devices can contain records of the addresses or locations involved in such navigation. The Global Positioning System (generally abbreviated "GPS") consists of 24 NAVSTAR satellites orbiting the Earth. Each satellite contains an accurate clock. Each satellite repeatedly transmits by radio a mathematical representation of the current time,

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<sup>1</sup> Because the Electronic Devices were produced by their users' to KPMG, and thereafter by KPMG to the United States Attorney's Office for the Southern District of New York, the Government does not believe that a search warrant authorizing a search of the Electronic Devices or the Subject Drives is necessary. The Government has, out of an abundance of caution, nonetheless elected to seek a search warrant.